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Proposed Counsel for Plaintiff BV Jordanelle, LLC

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

In re:

BV JORDANELLE, LLC,

Debtor-in-Possession.

Bankruptcy Case No 10-32121

(Chapter 11)

Honorable R. Kimball Mosier

BV LENDING, LLC, an Idaho limited liability company, and **BV JORDANELLE, LLC**, an Idaho limited liability company,

Plaintiffs,

v.

JORDANELLE SPECIAL SERVICE DISTRICT, a body corporate and politic, **JORDANELLE SPECIAL SERVICE DISTRICT, UTAH SPECIAL IMPROVEMENT DISTRICT NO. 2005-2**, a county improvement district, and **W. JEFFERY FILLMORE**, foreclosure trustee of Jordanelle Special Service District, Utah Special Improvement District No. 2005-2,

Defendants.

Adv. No. _____

**NOTICE OF REMOVAL OF PENDING
STATE COURT ACTION TO THE
UNITED STATES BANKRUPTCY
COURT FOR THE DISTRICT OF UTAH**

(Filed via ECF)

Pursuant to 28 U.S.C. §1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure, BV Jordanelle, LLC, which is both a debtor-in-possession before this Court and one of the named Plaintiffs in the above-entitled action (hereinafter, "**BVJ**"), through counsel, hereby removes the following pending state court action to the United States Bankruptcy Court for the District of Utah, Central Division, as an adversary proceeding which arises in, arises under and/or relates to BVJ's Chapter 11 bankruptcy case now pending before this Court:

*BV Lending, LLC and BV Jordanelle, LLC v. Jordanelle Special Service District, Jordanelle Special Service District, Utah Special Improvement District No. 2005-2, and W. Jeffrey Fillmore, Civil No. 100500444, currently pending in the Fourth Judicial District Court for Wasatch County, State of Utah (the "**State Court**"), the Honorable Derek P. Pullan presiding (hereinafter the "**State Court Action**").*

Pursuant to 28 U.S.C. § 1452(a) and Federal Rule of Bankruptcy Procedure 9027, BVJ states the following as grounds for removal:

1. The State Court Action was commenced by BVJ and its affiliate, BV Lending, LLC ("**BVL**"), on August 30, 2010 by the filing of a Complaint against Defendants Jordanelle Special Service District, Jordanelle Special Service District, Utah Special Improvement District No. 2005-2, and W. Jeffrey Fillmore (collectively, "**Defendants**") with the State Court.
2. Currently, no answers have been filed to the Complaint in the State Court Action.
3. On September 2, 2010, BVJ filed its voluntary petition for relief under Chapter 11 of Title 11 of the United States Code with this Court.
4. This Court has subject matter jurisdiction over the claims asserted in the State Court Action pursuant to 28 U.S.C. § 1334(b), because BVJ has filed a Chapter 11 bankruptcy case which is currently pending before this Court, and BVJ's claims in this adversary proceeding arise under or relate to BVJ's pending Chapter 11 bankruptcy case.

5. Additionally, the nature and basis of the claims asserted in the State Court action make this adversary proceeding a core proceeding, because all such claims relate to (a) the allowance or disallowance of Defendants' alleged claims against the estate and the estate's real property, pursuant to 28 U.S.C. § 157(b)(2)(B), and/or (b) a determination of the validity, extent and/or priority of Defendants' claimed liens against BVJ's real property, pursuant to 28 U.S.C. § 157(b)(2)(K), and/or (c) proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor relationship, pursuant to 28 U.S.C. § 157(b)(2)(O).

6. Additionally, and notwithstanding the jurisdictional grant of 28 U.S.C. § 1334, the federal courts also have original "federal question" jurisdiction over the claims asserted in the State Court Action pursuant to 28 U.S.C. § 1331, because the Complaint asserts claims against the Defendants which arise under the Constitution and laws of the United States, and in particular under the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

7. Additionally, and notwithstanding the jurisdictional grant of 28 U.S.C. § 1334, the federal courts also have original "diversity of citizenship" jurisdiction over the claims asserted in the State Court Action pursuant to 28 U.S.C. § 1332, because BVJ and BVL are citizens of the State of Idaho, all Defendants are residents of the State of Utah, and the amount in controversy in this adversary proceeding exceeds the sum or value of \$75,000.00, exclusive of interest and costs.

8. Based upon the foregoing, the above-entitled adversary proceeding is removable from the State Court to this Court, pursuant to 28 U.S.C. § 1452.

9. This Notice of Removal is timely filed within 90 days after the order of relief in BVJ's Chapter 11 bankruptcy case, pursuant to Federal Rule of Bankruptcy Procedure 9027(a)(2).

10. Pursuant to Federal Rule of Bankruptcy Procedure 9027(c), and simultaneously with the filing of this Notice of Removal, BVJ is filing the Notice of Removal to Bankruptcy Court attached hereto as Exhibit "A" with the State Court, and serving a true and correct copy of the same on the Defendants, their counsel and the Office of the United States Trustee.

11. Pursuant to Federal Rule of Bankruptcy Procedure 9027(a)(1), this Notice of Removal is accompanied by a copy of all process and pleadings in the State Court Action. Specifically, a copy of Plaintiffs' Complaint in the State Court Action is attached hereto as Exhibit "B." A copy of Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction in the State Court Action is attached hereto as Exhibit "C." An unsigned copy of the State Court's Temporary Restraining Order, approved as to form by Defendants' counsel, is attached hereto as Exhibit "D."

12. No process was served in the State Court Action or perfected prior to removal to this Court. Pursuant to Federal Rule of Bankruptcy Procedure 9027(f), service of process on the Defendants will now be completed in conformance with Part VII of the Federal Rules of Bankruptcy Procedure.

13. The State Court Action has now been removed to this Court as an adversary proceeding. Pursuant to Federal Rule of Bankruptcy Procedure 9027(e) and the General Order of Reference of the United States District Court for the District of Utah, DUCivR 83-7.1, which refers "any and all cases under Title 11 and any and all proceedings arising in or related to a case

under Title 11” to the United States Bankruptcy Court for the District of Utah, this Court now has plenary jurisdiction over this adversary proceeding.

DATED this 9th day of September, 2010.

RAY QUINNEY & NEBEKER P.C.

/s/ Michael R. Johnson
Michael R. Johnson
Proposed Attorneys for BV Jordanelle, LLC

CERTIFICATE OF SERVICE

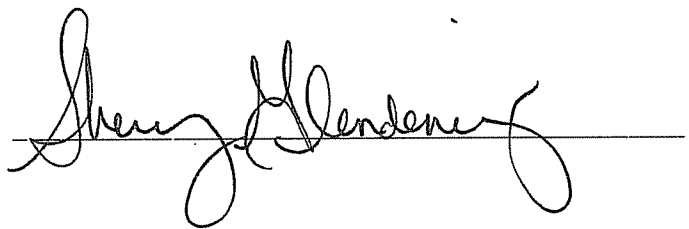
I hereby certify that on the 9th day of September, 2010, a true and correct copy of the foregoing was served upon the following parties via first class mail, postage prepaid, addressed as follows:

Jordanelle Special Service District
Jordanelle Special Service District, Utah Special Improvement District No. 2005-2
PO Box 519
Heber City, UT 84032

W. Jeffrey Fillmore
CALLISTER NEBEKER & McCULLOUGH
10 East South Temple, Suite 900
Salt Lake City, UT 84133

Mark Gaylord
Quinton J. Stephens
BALLARD SPAHR LLP
201 South Main Street, #800
Salt Lake City, UT 84111

OFFICE OF THE UNITED STATES TRUSTEE
405 South Main Street, #300
Salt Lake City, UT 84111

A handwritten signature in black ink, appearing to read "Sherry Henderson", is written over a horizontal line.